

II. Remarks

Claims 1, 2, 4, 6, 7, 9, 10, 12 and 13 are pending in this case, prior-pending claims 3, 5, 8 and 11 having been cancelled, and claims 12 and 13 added, by this amendment. Of these, claims 1 and 4 stand rejected under 35 U.S.C. Section 102(e) as being anticipated by the disclosure of Brown, U.S. Patent No. 6,390,110 (“the ‘110 patent”); claim 9 stands rejected under 35 U.S.C. Section 103(a) as being obvious over the Brown ‘110 patent; claims 2 and 10 are rejected, also under Section 103(a), as being obvious over the combination of the Brown ‘110 patent in view of Jones, U.S. Patent No. 6,010,176 (“the ‘176 patent”); claims 2, 6, 9 and 10 are rejected under Section 103(a) as being obvious over the combination of Brady, U.S. Patent No. 5,137,044 (“the ‘044 patent”) in view of the Jones ‘176 patent; and claims 1, 3, 5, and 6 stand rejected in the alternative under Section 102(b) or 103(a) in view of the Brady ‘044 patent. For the reasons specified, Applicants respectfully disagree with the rejections.

Turning first to the rejection of claims 1 and 4 over Brown ‘110, Applicants submit that, even accepting, *arguendo*, the propriety of the examiner’s reliance on the Brown patent as a 102(e) reference, that reference fails to anticipate the claimed invention. On the contrary, Applicants note that Brown teaches a transportable collective protection system comprising an inner liner **21**, a separate “A”-frame structure **20** disposed without the inner liner **21**, and an outer shell **22** provided over the “A”-frame structure, with *only* one side of the outer shell “colored with a suitable camouflage pattern....” Col. 4, lines 32-34.

Such structure is quite evidently in marked contrast to the invention of claim 1, according to which there is provided a portable enclosure with both an enclosure exterior surface bearing a first camouflage pattern, as well as a non self-supporting covering

removably disposable over the enclosure exterior surface, the covering bearing a second camouflage pattern which is different from the first camouflage pattern.

And with respect to the examiner's arguments, made in regards to prior-pending claim 3, that it would have been obvious to have provided a camouflage pattern on the inner liner **21** of Brown '110 (and even accepting, *arguendo*, the propriety of such contention), Applicant submits that there is no teaching in the art to support the assertion that such camouflaged pattern would be *different from* the camouflage pattern applied to the outer shell **22**. Indeed, the Brown '110 reference clearly teaches away from such a modification of the apparatus thereof, since the inner liner **21** and outer shell **22** are designed to work together as a unit and, as such, it is implicit that any camouflage which might be applied to the inner liner **21**, per the examiner's rationale, would necessarily be the same as such camouflage pattern applied to the outer shell **22** in order that, to employ the examiner's logic, "the tent would blend into its surroundings when the covering **22** is removed." Official Action, p. 5.

In light of the foregoing, Applicants respectfully submit that the rejection of dependent claim 4 is rendered moot. This fact notwithstanding, Applicants further note that none of the art of record, taken alone or in any permissible combination, anticipates or makes obvious the invention of claim 4.

Turning then to the rejection of claim 9 over Brown '110, Applicants respectfully submit that the invention thereof as instantly amended, comprising a portable enclosure having an enclosure exterior surface and a flexible covering removably disposable over the enclosure exterior surface, the removable covering bearing different first and second camouflage pattern on opposite sides thereof, is plainly distinguishable over the teaching of

Brown, described above.

As to the rejection of claims 2 and 10 over the asserted combination of Brown '110 in view of Jones '176, Applicants respectfully submit that the same are rendered moot by the failure of the primary reference to render obvious or anticipate either of the base claims 1 or 9, as explained above. This fact notwithstanding, Applicants' submit that neither of claims 2 or 10 are rendered obvious by any of the art of record, taken alone or in any permissible combination.

Referring now to the rejection of independent claim 6 as being obvious over the argued combination of Brady '044 in view of Jones '176, the same is untenable in that neither reference (even assuming, *arguendo*, the propriety of the argued combination) discloses a portable enclosure comprising a collapsible frame and a flexible, non self-supporting covering *removably attached to* and substantially surrounding the frame *to thereby define a walled enclosure*.

The invention of claim 9 is likewise not rendered obvious by the asserted combination of Brady '044 in view of Jones '176. As amended, claim 9 recites a portable enclosure having a shape defined by a frame with an enclosure exterior surface connected thereto and a flexible covering removably disposable over the enclosure exterior surface, the removable covering bearing different first and second camouflage patterns on opposite sides thereof.

In order to establish a prima face case of obviousness, there *must* be "some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." See MPEP § 2143; see also In re Fine, 5 USPQ2d 1596 (Fed. Cir. 1998); and In

re Jones, 21 USPQ2d 1941 (Fed. Cir. 1992). Without motivation, it is irrelevant that the references *may* separately teach each and every element of the claimed invention. *See In re Rouffet*, 47 USPQ2d 1453 (Fed. Cir. 1998). “The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art suggests the desirability of the combination.” MPEP § 2143.01 (*citing In re Mills*, 16 USPQ2d 1430 (Fed. Cir. 1990)(*emphasis original*)). Nor is it enough to provide conclusory statements respecting a supposed motivation to combine. ““The factual inquiry to combine references must be thorough and searching.” *In re Sang Su Lee*, 61 USPQ2d 1430 (Fed. Cir. 2001)(*quoting McGinley v. Franklin Sports, Inc.*, 60 USPQ2d 1001 (Fed. Cir. 2001)). ““Particular findings must be made as to the reason the skilled artisan, *with no knowledge of the claimed invention*, would have selected these components in the manner claimed.” *Id.* (*quoting Brown & Williamson Tobacco Corp. v. Phillip Morris Inc.*, 56 USPQ2d 1456 (Fed. Cir. 2000)(*emphasis added*)).

Instantly, the examiner contends that the Brady ‘044 reference teaches all aspects of the invention except for a reversible covering with camouflage patterns on opposing side. *See* Official Action, p. 6. To supply the admitted deficiencies, the examiner turns to the Jones ‘176 reference, arguing that the same teaches providing a removable covering that is reversible with different camouflaged patterns on opposing sides. According to the examiner, “[i]t would have been obvious... that the covering 22b of Brady could have been provided with a camouflage pattern on first and second opposing sides such that the appearance of the tent may be readily changed when used in first and second environments without the need for two separate coverings....” Official Action, p. 6.

However, there is in fact no suggestion of the desirability of the argued combination to be found in the cited references. Quite the contrary, the Jones '176 patent expressly teaches a single, self-supporting truck cover with *no* suggestion of the desirability to apply the same in the form of a non-self supporting covering over top of a separate, underlying, man-portable, tent-like enclosure. It consequently appears as if the examiner is impermissibly relying upon Applicants' own disclosure -- which to Applicants' knowledge represents the first teaching of a man-portable, tent-like enclosure having a removable covering bearing different first and second camouflage patterns -- to make a hindsight combination of references.

In light of the above, Applicants' respectfully submit that the remaining rejections of dependent claims 2 and 10 are mooted. Nevertheless, Applicants submit that none of these claims is anticipated or rendered obvious by any of the art of record, taken alone or in any permissible combination.

Referring lastly to the rejection of claims 1 and 6 in view of the Brady '044 patent, Applicants submit, in the first instance, that the invention of claim 1, particularly as amended, cannot be either anticipated or rendered obvious over that reference alone, as the same fails to teach a portable enclosure having an enclosure surface bearing a first camouflage pattern, and a covering bearing a second, different camouflage pattern being removably disposable over the enclosure exterior surface.

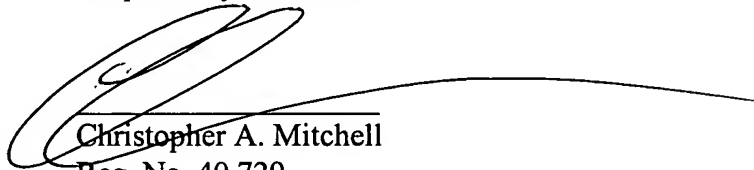
As to the invention of claims 6, Applicants reiterates their position that the Brady patent fails to disclose, or render obvious, a portable enclosure comprising a collapsible frame and a flexible, non self-supporting covering *removably attached to* and substantially surrounding the frame *to thereby define a walled enclosure*. On the contrary, Brady discloses

that the collapsible frame thereof has permanently secured thereto in every embodiment the inner layer which defines the enclosure wall.

III. Conclusion

For the above-specified reasons, Applicants submit that the claims are in condition for immediate allowance. Of course, the examiner is invited to contact Applicants' undersigned counsel at (734) 662-0270 if he should have any questions respecting this paper, or if a telephonic interview might otherwise expedite the prosecution of this case.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'C. Mitchell', is written over a horizontal line.

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